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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Follow-up report on decisions relating to communications submitted under article 22 of the Convention*

Introduction

1. The present report compiles information received from States parties and complainants since the fifty-fourth session of the Committee against Torture, which took place from 20 April to 15 May 2015.

A. Communication No. 15/1994

Khan v. Canada	
Decision adopted on:	15 November 1994
Violation:	Article 3 (deportation to Pakistan)
Remedy/recommendation:	The State party had an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.

2. On 27 March 2015, the State party submitted that, in its response to the Committee's Views dated 3 March 1995, it had reiterated its position that the complainant had not established that he would face a substantial risk of torture if removed to Pakistan. Further, the State party expressed its grave concern regarding the Views of the Committee, and formally requested that the Committee reconsider them. On 27 November 2008, and in previous requests, the Special Rapporteur for follow-up on Views had requested information on the measures taken to give effect to the Views of the Committee. Notwithstanding its ongoing concerns with the Committee's Views, the State party stated that it wished to provide information regarding the complainant and his immigration status. In addition, it requested that the communication be removed from the Committee's follow-up procedure for communications.

3. Since the adoption of the Committee's Views, the removal order issued against the complainant on 23 September 1992 had been subject to a stay, granted pursuant to the Immigration and Refugee Protection Act. On 24 April 2014, the complainant had been granted a three-year temporary resident permit under section 24 (1) of the Act, allowing him to remain in the country until 22 April 2017. A temporary resident permit could be

* Adopted by the Committee at its fifty-sixth session (9 November-9 December 2015).

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issued to a person subject to a removal order, among others, when there were compelling reasons to allow the person to enter or remain in Canada. The following factors had been considered in issuing the permit: his long-term residence in Canada, since 1990; his criminal record suspension and the lack of other criminal convictions since 1994; and the fact that he was no longer criminally inadmissible to Canada and, since his arrival in Canada in 1990, had received social assistance and had been issued 16 work permits, allowing him to work temporarily in Canada. Since the complainant was a holder of a temporary resident permit, the removal order would not be enforced during the three-year period of validity of his permit, unless he failed to comply with the provisions of the Immigration and Refugee Protection Act or its regulations. He had been informed about the procedure for applying for permanent residence, for which he would be able to apply, provided that he did not become inadmissible on any grounds other than those for which the original permit had been issued, and that he resided continuously in Canada during the period of validity of his temporary resident permit. The State party noted that, should his application for permanent residence be approved, he would undergo the requisite background checks (i.e., criminal, security, medical, passport and arrangements for care and support) before permanent resident status could be formally conferred. His removal would continue to be stayed pending the finalization of those verifications. If he was granted permanent resident status, the complainant would not be subject to removal from Canada unless he violated any of the conditions of his status (for example, by committing a serious crime). After the requisite period of residency, he would be eligible to apply for Canadian citizenship.

4. The State party maintained its concerns with the Committee's Views, its position that the complainant's rights under article 3 of the Convention were not at risk of being violated and that no remedy in respect of his situation was therefore required. Notwithstanding the above, the State party considered that the stay of his removal, the issuance of a temporary resident permit to him, and his eligibility to apply for permanent residence fully addressed the concerns set out in the Committee's Views. The State party did not consider that any additional measures were required to respond to the Committee's Views. Given the divergence between Canada's position and the Committee's Views, and in the light of the developments concerning the complainant's immigration status, the State party would be closing its file relating to the communication and requested that the communication be removed from the Committee's follow-up procedure for communications.

5. In October 2015, the State party's submission was transmitted to the complainant for comments.

6. The Committee decided to keep the dialogue open.

B. Communication No. 257/2004

Keremedchiev v. Bulgaria	
Decision adopted on:	11 November 2008
Violation:	Articles 12 and 16 (1)
Remedy/recommendation:	The Committee urged the State party to provide an effective remedy to the complainant, including fair and adequate compensation for the suffering inflicted, in line with the Committee's general comment No. 2, as well as medical rehabilitation.

7. On 15 January 2015, the State party submitted that, on 13 November 2014, the Council of Ministers of the Republic of Bulgaria had adopted a decision to pay an individual financial compensation to the complainant in the above communication in the amount of 5,000 Bulgarian leva.

8. A request for comments was sent to the complainant in January 2015. A reminder was sent in October 2015.

9. The Committee decided to close the dialogue, with a note of partially satisfactory resolution.

C. Communication No. 321/2007

Mopongo et al. v. Morocco	
Decision adopted on:	7 November 2014
Violation:	Article 3
Remedy/recommendation:	The State party was invited to inform the Committee, within 90 days from the date of the transmittal of the decision, of the action it had taken pursuant to the above decision.

10. On 9 March 2015, the State party submitted that it regretted that the Committee had not taken into consideration the information submitted by it on 23 October 2014 related to the efforts of the authorities to identify, locate and see the complainants, taking into consideration that the Committee had been informed that:

(a) The investigations duly undertaken by the competent authorities, namely the police, regarding the sub-Saharan community indicated that the complainants were not among that group;

(b) The State party had provided information on the introduction of a new migration policy in September 2013 that was more humane and in conformity with its international obligations, and that the policy was currently being implemented;

(c) In that framework, an operation on the legalization of the situation of migrants illegally present on the territory of the State party had begun on 1 January 2014 and been finalized on 31 December 2014. As described in the communication, none of the complainants were among the thousands of foreign individuals who had approached the Bureau for Foreigners in order to legalize their situation;

(d) Information from the Office of the United Nations High Commissioner for Refugees in Morocco, as well as the office for refugees and stateless persons established within the Ministry of Foreign Affairs and Cooperation of Morocco, confirmed that the names of the complainants did not appear in their databases;

(e) Thus, despite the investigations undertaken by the authorities, none of the names of the complainants had been found on the lists of asylum seekers, recognized refugees or persons regularized with a residence permit, which attested to the good faith of the State party's authorities.

11. Finally, the State party noted that the counsels for the complainants themselves did not possess any other information or elements relating to follow up in the above case.

12. In May 2015, the State party's submission was transmitted to the complainants for comments. A reminder for comments was sent to the complainant in October 2015.

13. The Committee decided to keep the follow-up dialogue open.

D. Communication No. 368/2008

Sonko v. Spain	
Decision adopted on:	25 November 2011
Violation:	Articles 12 and 16
Remedy/recommendation:	To carry out a suitable investigation of the events that occurred on 26 September 2007, to prosecute and punish any persons found to be responsible for those acts, and to provide effective remedy, which should include adequate compensation for Mr. Sonko's family.

14. On 28 July 2015, the State party submitted an update, in reply to the request for more information made by the Chair of the Committee during the consideration of the sixth periodic report of Spain in May 2015, and in order to update the information provided in its correspondence of 27 April 2012.

15. The Committee's decision was sent to the judicial and administrative authorities who had intervened in the matter. It was also published in the Official Gazette in May 2012.

16. As to the Committee's recommendation to carry out an investigation:

(a) In the light of the Committee's recommendation, the Office of the Prosecutor (Fiscalia General del Estado) issued instructions to the Chief Prosecutor of the Area of Ceuta to adopt adequate measures to allow the victim's relatives to request an investigation;

(b) The above-mentioned prosecutor requested the first-instance Examining Court No. 1 of Ceuta to void its decision that had closed the preliminary enquiry concerning the death of Mr. Sonko. The Prosecutor also requested it to inform the non-governmental organization Spanish Refugee Aid Committee about the reopening of the proceedings, so that it could facilitate the participation of the relatives in the proceedings;

(c) On 19 October 2012, the Court revoked its decision that had declared the preliminary enquiry closed;

(d) On 31 October 2012, the Spanish Refugee Aid Committee provided the Court with the contact details of Mr. Sonko's relatives in Vicar, Almeria;

(e) On 26 November 2012, the Court notified Mr. Sonko's relatives of its decision of 19 October 2012. The judge in Vicar explained to the relatives the judicial actions that they could request or carry out within the new enquiry. However, since none of the relatives had submitted an application to Examining Court No. 1 of Ceuta, on 18 January 2013, it decided to declare the preliminary enquiry concerning the death of Mr. Sonko once again closed.

17. The victim's relatives could still file a request for compensation before a court. However, the State party had no information indicating that they had requested such compensation through criminal, civil or administrative proceedings.

18. In October 2015, the State party's submission was transmitted to the complainant for comments.

19. The Committee decided to keep the follow-up dialogue open.

E. Communication No. 477/2011

Aarrass v. Morocco	
Decision adopted on:	19 May 2014
Violation:	Articles 2 (1), 11, 12, 13 and 15
Remedy/recommendation:	The Committee urged the State party to inform it of the measures that it had taken in accordance with the observations set forth above. Those measures must include the initiation of an impartial and in-depth investigation into the complainant's allegations. Such an investigation must include the conduct of medical examinations in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

20. On 23 December 2014, the complainant's counsel submitted that, on 4 July 2014, prison guards had told the complainant that he had been summoned to appear before the investigating judge (name on file) who had investigated the charges against him. The complainant had refused to meet the judge and had informed his sister. The complainant's lawyers had then written to the Ministry of Justice and to the Prosecutor General, to remind them that the complainant firmly opposed being interviewed by the investigating judge in question; to indicate that the complainant wanted to be represented by a particular counsel (a member of the bar associations of both Paris and Brussels), with whom he had developed a confidential relationship; and to request that the above-mentioned counsel be kept informed of all developments in the investigation. On 8 July 2014, the Prosecutor General's office had responded that the investigation was to be conducted by another investigating judge (name on file); that, to be allowed to represent the complainant, a counsel had to obtain a special authorization and to come from a State with which Morocco had concluded a legal aid treaty; and that the treaties between France and Morocco had been suspended since February 2014. The counsel of the complainant had responded on 10 July 2014, recalling that, under the Istanbul Protocol, victims should be kept informed of all stages of the investigation. That counsel had further requested that, exceptionally, the French lawyer of the complainant should be allowed to defend his interests and that at least his Moroccan lawyer should be informed of the developments. The same letter had been sent to the investigating judge. At the same time, the counsel of the complainant had filed a request for special authorization, which had been submitted to the Minister of Justice and to the King of Morocco. On 15 July 2014, the above requests had been reiterated, because in the interim the complainant had been informed orally that an interview had been scheduled for 17 July 2014, but none of the counsels had been informed. The complainant's request to be represented by the French counsel had ultimately been rejected, and he had been interviewed on two occasions, in July and August 2014, by the investigating judge in the presence of his Moroccan counsel.

21. In August 2014, the complainant had reported that he was again facing numerous threats in prison. Guards who had been removed following his allegations had reappeared in the "quarter". On one occasion, the guard who brought him his evening dose of medication had told him to take it, because he would soon need a higher dose; the guard had then kept the complainant awake throughout the night.

22. On 9 September 2014, the Court of Appeal in Brussels had ordered the Government of Belgium to request from the Moroccan authorities biweekly visits to the complainant by the Belgian consular service. On 22 September 2014, the Belgian consular service had

requested permission to visit the complainant in prison. At the time of submission, there had been no response to that request. On 26 September 2014, the sister of the complainant had informed his counsel that he had reported an intensification of acts of intimidation against him, that he had been systematically deprived of sleep and was in a state of exhaustion. On 4 November 2014, the counsels for the complainant had requested the investigating judge to allow the presence of an independent expert during an upcoming scheduled forensic medical examination.

23. On 6 November 2014, a medical doctor (name on file) had visited the complainant and asked if the medical examination could take place. The complainant had postponed the examination until 10 November 2014. On 11 November 2015, the Moroccan counsel of the complainant had reiterated the request for the participation of an independent medical expert. The request had been rejected on 13 November 2014 on the ground that it had been submitted belatedly.

24. On 8 January 2015, the submission was transmitted to the State party for its observations.

25. On 22 January 2015, the complainant's counsel submitted that the complainant had been visited the day before by members of "special services" (men dressed in green); five of the men had ransacked his cell, breaking the water tap and the stool. In addition, they had conducted a full body search of the complainant, with the whole scene being filmed. During that episode, two of the people who had particularly mistreated the complainant since his incarceration in the Salé prison (names on file) had been watching. In the evening, the complainant's stove had been confiscated. The pressure, harassment and humiliation inflicted on the complainant had become such that he had decided to start a hunger strike.

26. In January 2015, the complainant's submission was transmitted to the State party for its observations.

27. On 30 March 2015, the State party submitted that the counsel of the complainant was trying to amalgamate different procedures in order to absolve his client, through legally inappropriate means, even though the utilized instruments lacked conviction in view of the evidence against him. Rather than adhering to the follow-up procedure, the counsel for the complainant had skidded into incoherence and raised issues related to the unfinished cassation proceedings and to the consular protection procedure initiated with the justice system in Belgium. The State party's authorities recalled that, during the meeting that had taken place on 21 November 2014 with the Special Rapporteur for follow-up on Views, information had been provided on the development of the investigation into the complainant's torture allegations, conducted by an investigating judge of the Rabat Court of Appeals. In the framework of that investigation, the investigating judge had ordered a forensic medical examination of the complainant, to be conducted by a medical commission, including a psychiatrist. According to the complainant himself, the interview had lasted for only three minutes, since he had refused to be examined, under the pretext that the specialist had not introduced himself to the complainant or provided a visit card. The authorities considered that behaviour as obstructing the work of the investigating judge and bad faith on the side of the complainant. The State party's authorities remained at the disposal of the Committee and would continue to inform it of the development of the investigation.

28. On 21 April 2015, the counsel for the complainant submitted that the complainant had not been receiving adequate health care in the prison.

29. On 16 June 2015, the counsel for the complainant submitted that the State party had announced that a medical examination would take place. The examination had apparently been conducted, but the results had not been communicated to the complainant or his counsel. She further submitted that the State party did not appear to have taken any action

to, for example, identify the potential perpetrators of the alleged torture against the complainant. Lastly, after more than two years, the appeal submitted against the verdict had still not been processed. The counsel pointed out that the complainant was being detained in very difficult conditions, and that he was not allowed to see his family, notably his father, who was terminally ill, and his daughter, who was now 10 years old and had not seen her father in years.

30. In October 2015, the above submissions were transmitted to the State party for its observations.

31. The Committee decided to keep the follow-up dialogue open.

F. Communication No. 490/2012

E.K.W. v. Finland	
Decision adopted on:	4 May 2015
Violation:	Article 3 (removal to the Democratic Republic of the Congo)
Remedy/recommendation:	For the State party to inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps it had taken in response to the decision.

32. The Committee's decision was transmitted to State party on 27 May 2015.

33. On 4 September 2015, the State party submitted that, on 15 July 2015, the complainant and her two minor children had been granted asylum by a decision of the Finnish Immigration Service. They had been issued fixed-term residence permits, valid until 16 July 2019 and renewable under the conditions laid down in the Aliens Act. The complainant had also been issued an unrestricted work permit.

34. In October 2015, the State party's submission was transmitted to the complainant for comments.

35. The Committee decided to keep the dialogue open in order to give the complainant an opportunity to provide comments.

G. Communication No. 497/2012

Bayramov v. Kazakhstan	
Decision adopted on:	14 May 2014
Violation:	Article 1, in conjunction with article 2 (1); and articles 12, 13, 14 and 15
Remedy recommended:	The Committee urged the State party to conduct a proper, impartial and independent investigation in order to bring to justice those responsible for the complainant's treatment, to provide the complainant with full and adequate reparation, including compensation and rehabilitation, and to prevent similar violations in the future.

36. On 18 August 2015, the counsel for the complainant reiterated that Kazakhstan had partially complied with the decision of the Committee. On 12 December 2014, the Kostanai Regional Court had partially satisfied the claim of the complainant against the Department

of Internal Affairs of the Kostanai Region for moral damages as a result of the torture. The complainant had filed a lawsuit asking for compensation in the amount of 100 million tenge (about $550,000). The court had decided to grant compensation for moral damages in the amount of 100,000 tenge (about $550). The police force had appealed before the Supreme Court. On 28 May 2015, the Supreme Court had refused to initiate a supervisory review. In June 2015, the complainant had received compensation for moral damages in the amount of 100,000 tenge.

37. On 30 July 2014, the Prosecutor's Office of the Kostanai Region had initiated a criminal case under subparagraph A of part 2 of article 347-1 of the Criminal Code (Torture). On 10 December 2014, the Prosecutor's Office had issued an order to dismiss the criminal case for lack of evidence. On 3 March 2015, the Prosecutor General had cancelled that decision and a special prosecutor had been put in charge of the investigation. The investigation had been reopened; however, the prosecutor had taken hardly any action to complete it and bring the perpetrators to justice. On 18 November 2014, one of the alleged victims (name on file) who had been subjected to torture along with the complainant had filed a complaint with the Prosecutor's Office regarding the fact of torture. Over an extended period of time, the Prosecutor's Office had been investigating two episodes of torture. Following a request from the lawyer, the cases had been joined on 3 April 2015, and there were now two alleged victims.

38. Up to that time, however, the Prosecutor had not ruled on the qualification of the alleged acts, and one of the alleged perpetrators (name on file) had not been charged as a suspect in the case, even though he had been identified by the victims. Consequently, the victims had not been able to confront him. At the same time, some of the alleged perpetrators continued to perform their professional duties as police officers, despite the fact that they were suspects in a torture investigation. Motions of the lawyer to have those individuals arrested had been dismissed by the Prosecutor's office, owing to the fact that a ruling on the qualification of the acts had not yet been made. Under article 203 of the Criminal Procedure Code of the Republic of Kazakhstan, "If there is sufficient evidence against a person confirming a suspicion of committing a crime, the prosecutor, the person performing the pretrial investigation, makes a reasoned decision on the qualification of the acts of the suspect ... within a reasonable time". The investigation had been resumed by the Prosecutor's office more than a year earlier, and the counsel maintained that such a state of affairs pointed to an intentional delaying of the investigation. Such an investigation did not meet the criteria for a prompt and effective investigation, and therefore the State party was not complying with its obligations under article 12 of the Convention.

39. The Committee decided to keep the follow-up dialogue open.

H. Communication No. 503/2012

Ntikarahera v. Burundi

Decision adopted on:	12 May 2014
Violation:	Articles 2 (1) and 11, 12, 13 and 14, read in conjunction with articles 1 and 16
Remedy/recommendation:	The Committee urged the State party to conduct an impartial investigation into the events in question for the purpose of prosecuting those allegedly responsible for the victim's treatment, and provide adequate and fair compensation encompassing the means for as full rehabilitation as possible.

40. On 18 May 2015, the counsel for the complainant submitted that, in September 2014, the complainant had been summoned to appear before an investigating judge in relation to his torture allegations. The complainant had been accompanied by counsel during the interview on 3 September 2014, during which the complainant had described the torture he had endured at the hands of the State agents in 2010. The investigating judge had been surprised by the severe physical consequences from which the victim was still suffering and requested a medical examination to join the information to the case file. On 22 September 2014, the results of the requested examination had been transmitted in a closed letter to the authorities by the lawyer for the complainant. Subsequently, the investigating judge had informed the lawyer that he had interviewed two persons mentioned in the complainant's statement; he had also indicated that he had been unable to interview another of the implicated officials, the former police commissioner in Bujumbura, who at the time had been on mission to Mali. On 2 March 2015, two of the former colleagues of the complainant had also been interviewed as witnesses, pursuant to a proposal of the investigating judge. In mid-April 2015, the investigating judge had indicated that he would contact the lawyer for the complainant in May 2015 to inform him of the developments. The counsel thus submitted that, on the basis of the information received, the investigation was being conducted, for the time being, in an impartial and satisfactory manner. He noted, however, that some of the perpetrators indicated had not been interviewed and that the victim and the alleged perpetrators had not confronted each other as of yet. The counsel provided information regarding the state of health of the complainant and the situation of some of the alleged perpetrators.

41. In October 2015, the complainant's comments were transmitted to the State party for its observations and a reminder was issued to the State party to provide information regarding the implementation of the decision.

42. The Committee decided to keep the follow-up dialogue open.

I. Communication No. 544/2013

A.K. v. Switzerland	
Decision adopted on:	8 May 2015
Violation:	Article 3 (removal to Turkey)
Remedy/recommendation:	To inform the Committee, within 90 days, of whatever steps the State party had taken in the light of the observations.

43. On 2 July 2015, the State party submitted that, on 1 July 2015, the Secretary of State on Migration had granted refugee status to the complainant, his wife and his children. Accordingly they were no longer at risk of deportation to Turkey.

44. In October 2015, the submission was transmitted to the complainants for comments.

45. The Committee decided to keep the dialogue open.